

1 Honorable Robert S. Lasnik
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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 Leobardo MORENO GALVEZ, et al.

11 Case No. 2:19-cv-321-RSL

12 Plaintiffs,

13 v.
14 **PLAINTIFFS' REPLY IN SUPPORT
15 OF THEIR MOTION FOR CLASS
16 CERTIFICATION**

17 Lee Francis CISSNA, Director, U.S. Citizenship
18 and Immigration Services, et al.

19 Noted on Motion Calendar:
20 April 5, 2019

21 Defendants.

22 ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Plaintiffs Leobardo Moreno Galvez, Jose Luis Vicente Ramos, and Angel de Jesus Muñoz Olivera are young immigrants that Washington state courts have concluded were (1) abandoned, abused or neglected by their parents, and (2) should not be returned to their country of origin. They seek to represent a class of 18 to 20-year-old immigrant juveniles in Washington State who, like themselves, have applied or will apply for Special Immigrant Juvenile Status (SIJS). The named Plaintiffs and the proposed class challenge a new, uniform requirement imposed by U.S. Citizenship and Immigration Services (USCIS) in adjudicating proposed class members' SIJS petitions: namely, that in order to be considered "competent" to make the required factual findings for SIJS, a state court must have the power to reunify members of the proposed class with their parents.

12 This proposed class meets all requirements of Federal Rule of Civil Procedure 23.
13 Defendants' arguments to the contrary are unavailing. First, Plaintiff Muñoz Olivera has standing
14 because his injury is not speculative: USCIS's new policy undoubtedly applies to him, rendering
15 him ineligible for SIJS. Second, Plaintiffs have satisfied the numerosity requirement by
16 identifying a minimum of 53 class members and demonstrating the impracticability of joinder.
17 Indeed, since Plaintiffs filed their motion, the Washington State Department of Commerce has
18 published a report that demonstrates the proposed class likely consists of at least 100 members.
19 Third, Plaintiffs have demonstrated that Defendants' new policy applies equally to all
20 Plaintiffs—including Plaintiff Muñoz Olivera—and proposed class members, thus meeting the
21 commonality and typicality requirements. Finally, Defendants do not challenge the adequacy of
22 proposed class representatives or class counsel. Accordingly, this Court should certify the
23 proposed class with the named Plaintiffs as its representatives.

II. ARGUMENT

A. Plaintiffs Have Standing to Bring This Suit.

Defendants first assert that Plaintiff Muñoz Olivera lacks Article III standing because USCIS has not rendered a decision on his SIJS application, which has been pending for more than double the 180-day adjudication requirement set forth in 8 U.S.C. § 1232(d)(2). Dkt. 3 at 8. As an initial matter, dismissing Plaintiff Muñoz Olivera from this case would not eliminate other viable class representatives. “In a class action, standing is satisfied if at least one named plaintiff meets the requirements.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (citing *Armstrong v. Davis*, 275 F.3d 849, 860 (9th Cir. 2001)). Defendants do not question the standing of Plaintiffs Moreno Galvez and Vicente Ramos; nor can they, for USCIS has denied both Plaintiffs’ SIJS applications on the basis of Defendants’ new policy regarding state court jurisdiction. See Dkt. 3 at 6-8. As a result, they unquestionably have standing to challenge Defendants’ policy.

Plaintiff Muñoz Olivera possesses standing to challenge Defendants' policy. Defendants allege that USCIS's decision on his SIJS petition is "still unknown" and any potential injury from a future denial remains "entirely speculative" and incapable of redress. Dkt. 24 at 12. However, Defendants do not contest that their new policy applies to Plaintiff Muñoz Olivera nor dispute that their policy, if unaltered, will ultimately result in the denial of his SIJS petition. Because the challenged policy has rendered Plaintiff Muñoz Olivera—like all other proposed class members—ineligible for SIJS, his injury is not speculative and is sufficient to demonstrate his standing.

Defendants’ “standing” concern is really one of ripeness: whether Plaintiff Muñoz Olivera’s claims challenging the policy are premature. *See Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). Here, his claims are not premature

1 because he and this Court can “firmly predict” that the agency will deny his application based on
 2 its new policy. *Immigrant Assistance Project of L.A. Cty. Fed’n of Labor v. I.N.S.*, 306 F.3d 842,
 3 861-62 (9th Cir. 2002). USCIS’s new, unlawful policy all but guarantees the denial of Plaintiff
 4 Muñoz Olivera’s SIJS petition. In adjudicating the petitions of the other named Plaintiffs, USCIS
 5 has made clear that it will not recognize any Washington state court as “competent” to issue the
 6 order unless the court has jurisdiction to determine whether a parent should regain custody and to
 7 compel reunification for youth between the ages of 18 and 20. As a SIJS petitioner who obtained
 8 a predicate order after he was 18 years old in Washington State, Plaintiff Muñoz Olivera falls
 9 squarely within the group impacted by this policy. Moreover, like other 18- to 20-year-olds in
 10 Washington, USCIS has long delayed adjudication of Plaintiff Muñoz Olivera’s petition, further
 11 suggesting he will subject to Defendants’ new policy. Dkt. 3 at 9. Notably, Defendants only
 12 hypothesize that USCIS “could deny” Plaintiff Muñoz Olivera’s petition “based on any number
 13 of other valid reasons,” without pointing to any deficiencies in that petition, which is in the
 14 record. Dkt. 24 at 12; *see also* Dkt. 27-16, Muñoz Olivera SIJS Order; Dkt. 27-17, Muñoz
 15 Olivera I-360. Whether his SIJS petition may theoretically be denied on an *additional*
 16 unspecified ground does not disqualify him as having standing to challenge the policy that
 17 directly and concretely affects his pending SIJS petition. Indeed, as Defendants have identified
 18 no other deficiency, this Court can “firmly predict” that USCIS “will deny the application by
 19 virtue of the challenged [policy].” *Immigrant Assistance Project*, 306 F.3d at 862.

20 Defendants fail to acknowledge the nature of Plaintiff Muñoz Olivera’s injury. It is not,
 21 as Defendants allege, the outcome of Plaintiff Muñoz Olivera’s individual SIJS petition, but
 22 rather “the deprivation of [his] chance to get a ‘fair shake’ at obtaining SIJ status as a result of
 23 Defendants’ adoption of an allegedly unlawful, extrajudicial requirement.” *J.L. v. Cissna*, No.
 24

1 18-cv-04914-NC, 2019 WL 415579, at *6 (N.D. Cal. Feb. 1, 2019) (granting motion for class
 2 certification). Indeed, the Ninth Circuit has held that “harm[s] . . . directly traceable to a written
 3 policy” can satisfy Article III’s injury requirement. *Armstrong*, 275 F.3d at 861, *abrogated on*
 4 *other grounds by Johnson v. California*, 543 U.S. 499, 504-05 (2005). Plaintiff Muñoz Olivera
 5 suffers an injury based on Defendants’ unlawful policy that has rendered him ineligible for SIJS.

6 Finally, Plaintiff Muñoz Olivera’s injury is redressable. If Plaintiffs prevail, Defendants
 7 will be enjoined from applying their unlawful requirement to all SIJS petitioners, current and
 8 future. As such, the proposed class, including Plaintiff Muñoz Olivera, has Article III standing to
 9 pursue the claims.

10 **B. Plaintiffs Have Met Rule 23(a)’s Requirements and the Motion for Class Certification
 Should Be Granted.**

11 1. The proposed class is sufficiently numerous that joinder is impracticable.

12 Plaintiffs have amply demonstrated numerosity as required by Rule 23(a)(1). In their
 13 response, Defendants discount substantial evidence and ignore case law demonstrating that
 14 joinder would be impracticable for the proposed class of abandoned, abused, and neglected
 15 youth. Defendants fail to respond to the case law certifying classes with fewer than 53 class
 16 members and ignore evidence of additional class members. Defendants also fail to address the
 17 fact that the class encompasses future applicants.

18 Plaintiffs’ proposed class consists of individuals who “have been issued predicate SIJS
 19 orders by Washington State Courts after turning eighteen years but prior to turning twenty-one
 20 years old and have submitted or will submit SIJS petitions to USCIS prior to turning twenty-one
 21 years old.” Dkt. 2 at 2. In response to concrete evidence showing a class size of 53 members at
 22 minimum, *see id.* at 13 (citing practitioner declarations), Defendants assert this number is
 23 insufficient. Dkt. 24 at 14 (“[T]he named Plaintiffs have identified *only* 53 potential class
 24

1 members" (emphasis added)). They do not respond to the case law that Plaintiffs cite, showing
 2 that numbers far *below* 53 can be more than sufficient to establish numerosity. Dkt. 2 at 13.
 3 Courts have certified classes comprised of relatively few class members where joinder was
 4 nonetheless impracticable. *See, e.g., Ark. Educ. Ass'n v. Bd. of Educ. of Portland, Ark. Sch. Dist.*,
 5 446 F.2d 763, 765-66 (8th Cir. 1971) (17 class members); *Cross v. Nat'l Tr. Life Ins. Co.*, 553
 6 F.2d 1026, 1030 (6th Cir. 1977) (in anti-discrimination suit, certifying class of all current and
 7 prospective employees where a maximum of only seven employees could be identified but it was
 8 expected that the number of such employees would increase in the absence of the challenged
 9 discriminatory policy); *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan &*
 10 *Tr.*, 268 F.R.D. 670, 673-74 (W.D. Wash. 2010) (collecting cases, including one where
 11 numerosity was satisfied with 16 identified class members "but numerous individuals would be
 12 affected in the future").

13 In addition, since the filing of Plaintiffs' motion for class certification, the Washington
 14 State Department of Commerce released a report that further demonstrates the proposed class is
 15 much larger than 53 identified petitioners. The report found that 83 vulnerable youth
 16 guardianship (VYG) cases had been filed in 14 counties across the state from July 23, 2017,
 17 when the VYG statute came into effect, to September 30, 2018. Wash. State Dep't of Commerce,
 18 *Vulnerable Youth Guardianships: An Evaluation as Directed by Chapter 279, Laws of 2017*, at
 19 7, <https://bit.ly/2WLcL3a> (Jan. 2019). This number therefore does not encompass the individuals
 20 who filed VYG petitions on or after October 1, 2018. Based on the numbers provided in the
 21 report, there are almost certainly over 100 potential class members who obtained predicate SIJS
 22 findings in VYG proceedings alone. Proposed class members also include individuals like
 23 Plaintiff Moreno Galvez, who are issued predicate orders in other types of state court
 24

1 proceedings such as juvenile offender proceedings or extended foster care proceedings. *See* Dkt.
 2 at 8. Significantly, even though Defendants alone have possession of information on the
 3 current count of proposed class members who have submitted SIJS petitions before USCIS, they
 4 rely on this information to dispute numerosity. In certifying classes of noncitizens, courts have
 5 taken notice of circumstances in which “INS [now DHS] is uniquely positioned to ascertain class
 6 membership.” *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (requiring the
 7 government, not plaintiffs, to provide notice to class members).

8 Defendants imply that joinder might be practicable because “a majority of [SIJS] orders”
 9 were issued in the Puget Sound region, but do not contest that class members are in fact spread
 10 out across at least 14 counties throughout the state. *See* Wash. State Dep’t of Commerce, at 7.
 11 Moreover, they do not explain how vulnerable youth should be expected to join this lawsuit and
 12 present their claims, even if a majority of them are located in the Puget Sound region. Dkt. 24 at
 13 14. Instead, Defendants assume that proposed class counsel—attorneys of a non-profit
 14 organization—have unlimited resources to not only identify all proposed class members but also
 15 individually represent those proposed class members. In short, Defendants simply ignore the
 16 impracticability of joinder for these young, vulnerable class members. Dkt. 24 at 14; *see, e.g.*,
 17 *Dunakin v. Quigley*, 99 F. Supp. 3d 1297, 1327 (W.D. Wash. 2015) (finding joinder
 18 impracticable where proposed class members were, *inter alia*, “spread across the state” and “low-
 19 income Medicaid recipients”). Defendants also cite a case requiring courts to consider, *inter alia*,
 20 the “ability and willingness of individual class members to bring claims, as affected by their
 21 financial resources,” a factor which only supports Plaintiffs’ argument that the vulnerable youth
 22 they seek to represent are not positioned to individually litigate their claims. *Culley v. Lincare
 23 Inc.*, No. 2:15-cv-00081-MCE-CMK, 2017 WL 3284800, at *2 (E.D. Cal. Aug. 2, 2017); Dkt. 24
 24

1 at 14 (quoting *Culley*). Indeed, apart from their youth, as undocumented immigrants, many
 2 proposed class members lack work authorization and a stable source of income. *See Dkt. 2 at 15.*

3 Additionally, Defendants ignore the impracticability of joinder resulting from the
 4 existence of unnamed, unknown future class members who will also be subjected to Defendants'
 5 unlawful and ultra vires requirement for SIJS eligibility. *See Dkt. 2 at 14* (citing cases); *see also,*
 6 *e.g., Rivera v. Holder*, 307 F.R.D. 539, 550 (W.D. Wash. 2015) ("Factors in assessing whether
 7 impracticality justifies finding a small class sufficiently numerous include . . . whether plaintiffs
 8 seek prospective relief affecting future class members."). The impracticability of joining future
 9 class members provides an additional basis for determining that Plaintiffs satisfy the numerosity
 10 requirement.

11 Finally, Defendants ignore case law stating that "the numerosity requirement is relaxed"
 12 because Plaintiffs seek declaratory and injunctive relief. *Arnott v. USCIS*, 290 F.R.D. 579, 586
 13 (C.D. Cal. 2012) (quoting *Sueoka v. United States*, 101 Fed. App'x 649, 653 (9th Cir. 2004)).
 14 Ninth Circuit precedent clearly instructs that "'impracticability' does not mean 'impossibility,'
 15 but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm
 16 Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (citation omitted). Plaintiffs
 17 have shown that the potential class size is sufficiently numerous that joinder is impracticable.
 18 This Court should find that the numerosity requirement has been satisfied.

19 2. The proposed class satisfies commonality because they present the same questions
 20 regarding USCIS's new policy on state court jurisdiction.

21 Defendants erroneously contend there are no "questions of law or fact common to the
 22 class." Dkt. 24 at 15 (quoting Fed. R. Civ. P. 23(a)(2)). They allege that the unique factual and
 23 legal issues specific to each SIJS petitioner preclude commonality and "overwhelm the class
 24 proposed by Plaintiffs." Dkt. 24 at 15. However, Defendants' arguments ignore the central claim

1 of proposed class members. The merits and procedural posture of each individual SIJS petition
 2 are irrelevant to this case because Plaintiffs challenge Defendants' new policy which uniformly
 3 refuses to recognize SIJS findings unless they are issued by state courts that have authority to
 4 order the youth's reunification with a parent. Plaintiffs and proposed class members all face this
 5 policy, and whether this policy is unlawful is a common legal question sufficient to satisfy
 6 commonality. *See, e.g., Gonzalez Rosario v. USCIS*, No. C15-0813JLR, 2019 WL 1275097, at
 7 *3 (W.D. Wash. Mar. 20, 2019) ("This court's binding resolution of the common question
 8 whether USCIS is obligated to adjudicate initial asylum EADs within 30 days is distinct from the
 9 factual questions that may arise in individual actions."); *Perez-Olano v. Gonzalez*, 248 F.R.D.
 10 248, 257 (C.D. Cal. 2008) ("Courts have found that a single common issue of law or fact is
 11 sufficient to satisfy the commonality requirement."); *Armstrong*, 275 F.3d at 868 ("[I]n a civil
 12 rights suit . . . commonality is satisfied where the lawsuit challenges a system-wide practice or
 13 policy that affects all of the putative class members.").

14 Differences in procedural posture among individual SIJS petitions do not defeat
 15 Plaintiffs' showing of an injury common to the proposed class. Plaintiffs challenge an unlawful
 16 policy that Defendants apply to all proposed class members irrespective of the individual facts
 17 presented in their SIJS petitions. Defendants point out that some class members, including
 18 Plaintiff Muñoz Olivera, are still awaiting a decision from USCIS regarding their SIJS petitions,
 19 while others, such as Plaintiffs Moreno Galvez and Vicente Ramos, have already received
 20 denials on their SIJS petitions.¹ *See* Dkt. 24 at 16. Other class members may have received, or
 21

22 ¹ Defendants err in recounting other aspects of Plaintiff Jose Luis Vicente Ramos' factual
 23 background. They incorrectly state that Plaintiff Vicente Ramos was "charged with a drug
 24 crime" and cite to his Form I-213. Dkt. 24 at 9 (citing Dkt. 28-2). Plaintiff Vicente Ramos was
 not charged with a drug crime, has never been charged with any crime, and the Form I-213 in
 fact states, "Subject has no criminal history." Dkt. 28-2, Vicente Ramos I-213 at 2.

1 may receive in the future, Notices of Intent to Deny or Requests for Evidence from USCIS. *See*
 2 Dkt. 24 at 16. But these differences do not undermine commonality based on a uniform policy
 3 applied to all class members. *See, e.g., Parra v. Bashas', Inc.*, 536 F.3d 975, 978-79 (9th Cir.
 4 2008) (“Where the circumstances of each particular class member vary but retain a common core
 5 of factual or legal issues with the rest of the class, commonality exists.” (footnote omitted)).

6 Defendants also attempt to distinguish this class action from two recent court decisions
 7 examining the same USCIS policy that Plaintiffs challenge. Dkt. 24 at 16 In those two cases, the
 8 district courts certified classes of youth who received SIJS orders pursuant to California Probate
 9 Code § 1510.1(a) and in guardianship proceedings before the New York Family Court. *See J.L.*,
 10 2019 WL 415579, at *3, *9; *R.F.M v. Nielsen*, --- F. Supp. 3d ---, 2019 WL 1219425, at *8
 11 (S.D.N.Y. Mar. 15, 2019). Defendants allege that this class action is distinguishable from those
 12 cases because here, the Court “is faced with two different Washington State statutes—VYG and
 13 juvenile offender,” therefore presenting a wider scope of legal and factual issues.² Dkt. 24 at 16.
 14 However, the differences in these two state court proceedings have no impact on how USCIS
 15 applies its policy to Plaintiffs. For example, USCIS relied on the same policy to deny SIJS
 16 petitions filed by both Plaintiff Moreno Galvez, who obtained SIJ findings in juvenile offender
 17 proceedings, and Plaintiff Vicente Ramos, who obtained SIJS findings in a vulnerable youth
 18 guardianship proceeding. Compare Dkt. 4-7, Moreno Galvez I-360 Denial Notice at 2-3, with
 19 Dkt. 4-10, Vicente Ramos I-360 Denial Notice at 2-3.

20 Defendants misconstrue the federal district courts’ conclusions in *J.L.* and *R.F.M.*, which
 21 both addressed class claims challenging the same USCIS policy. In each case, the courts certified
 22

23 ² Defendants ignore that proposed class members may also obtain SIJ findings from a
 24 Washington state court in Extended Foster Care proceedings. *See* Dkt. 2 at 6; Dkt. 1 ¶¶ 40-44.
 For the reasons explained above, the type of state proceeding does not undermine commonality
 in this case.

1 the proposed class because Defendants' policy applied equally to class members. For example,
 2 the district court for the Northern District of California stated that class certification was
 3 appropriate because

4 Plaintiffs challenge Defendants' new requirement that, to support a SIJ
 5 petition, guardianship orders must be issued by a state court with
 6 jurisdiction to order reunification between the SIJ petitioner and at least one
 7 of her parents Defendants' new requirement is . . . a "practice or
 8 policy." Whether that requirement is lawful is a common question of law
 9 sufficient to satisfy commonality.

10 *J.L.*, 2019 WL 415579, at *8 (internal citation omitted). Similarly, the district court for the
 11 Southern District of New York found commonality and granted the plaintiffs' Motion for Class
 12 Certification, reasoning that

13 [t]he plaintiffs are *not challenging individual SIJ status decisions*, nor do
 14 plaintiffs ask this Court to determine the outcome of any individual petition.
 15 Rather, the plaintiffs challenge an alleged agency policy affecting the
 16 outcomes of their SIJ adjudications as violating the APA.

17 *R.F.M.*, 2019 WL 1219425, at *10 (emphasis added). In both of these decisions, the courts
 18 premised class certification on plaintiff's challenge to the new USCIS policy, rather than on the
 19 substance of the respective state court statutes.

20 As a result, this case is not distinguishable from the California and New York lawsuits for
 21 the reason that it involves separate Washington state courts. Defendants have implemented the
 22 same, unlawful policy in all three states—and indeed, nationwide—that state courts must have
 23 the authority to return a youth to the custody of their parent in order to have jurisdiction to make
 24 SIJ findings. *See, e.g.*, Dkt. 25 at 28 (confirming Defendants' position that a state court "must
 have competent jurisdiction to determine both whether a parent could regain custody and to order
 reunification, if warranted"). USCIS has denied, or will deny, all class members' SIJS petitions
 on this same basis. Therefore, contrary to Defendants' contentions, all class members' injuries

1 are capable of class-wide resolution through declaratory and injunctive relief. Plaintiff's request
2 for relief would resolve the litigation as to all class members in "one stroke." *Wal-Mart Stores,*
3 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

3. As all proposed class members make the same claim to challenge a singular USCIS policy, Plaintiffs have shown typicality.

Finally, Plaintiffs satisfy the typicality requirement of Rule 23(a)(3). Here, the same analysis as the previous section applies, because “[t]he commonality and typicality requirements of Rule 23(a) tend to merge.” *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). Defendants acknowledge that named Plaintiffs are challenging Defendants’ policy of denying SIJS petitions “due to a lack of valid order from a Washington state court with competent jurisdiction.” Dkt. 24 at 17. This acknowledgment belies Defendants’ subsequent contention that “[i]ndividual questions concerning” the named Plaintiffs will defeat typicality. *Id.*

As explained above, Plaintiffs are neither challenging individual SIJS decisions nor requesting that this Court review the merits of their SIJS petitions. Rather, they challenge the singular USCIS policy that Defendants have applied since February 2018 to SIJS petitions from youth who received a predicate state court order after turning eighteen. By uniformly applying this policy to all Plaintiffs and proposed class members, Defendants have categorically barred the proposed class from obtaining SIJS status. As a result, Plaintiffs have met their burden to establish that their claims are “reasonably co-extensive with those of absent class members,” and therefore typical of the claims of the proposed class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court certify the proposed class and enter the proposed certification order.

1 DATED this 5th day of April, 2019.

2 s/ Matt Adams
Matt Adams, WSBA No. 28287

3 s/ Leila Kang
Leila Kang, WSBA No. 48048

4 s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974

5 s/ Tim Warden-Hertz
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6 s/ Meghan Casey
Meghan Casey, WSBA No. 45275

7 s/ Olivia Gibbons
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 5, 2019, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/ECF system which will send notification of such filing to the
4 following:

5 Chalia I. Stallings-Ala'ilima chalias@atg.wa.gov
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9 And I hereby certify that I have mailed by United States Postal Service the document to the
10 following non CM/ECF participants: None.

11 Dated this 5th day of April, 2019.

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